

UPPER TRIBUNAL (LANDS CHAMBER)



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TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

*COMPENSATION – LIMITATION – claim included in statement of case covering multiple references filed within time – notice of reference filed after expiry of limitation period – whether claim referred to Tribunal within time – s.1, Land Compensation Act 1961 – s.9, Limitation Act 1980 – rr.7 and 28, Tribunal Procedure (Upper Tribunal) (Lands Chamber) Rules 2010*

IN THE MATTER OF A NOTICE OF REFERENCE

BETWEEN:

FIVE OAKS LAND LIMITED

Claimant

-and-

LONDON BOROUGH OF REDBRIDGE

Respondent

Re: Land at Five Oaks Lane,  
Essex,  
IG7 4QP

Martin Rodger, Deputy Chamber President

by remote video platform

26 November 2021

*James Pereira QC* and *George Mackenzie*, instructed by Dentons UK and Middle East LLP for the claimant

*Alexander Booth QC* and *Rebecca Clutton*, instructed by Squire Patton Boggs (UK) LLP, for the respondent

The following case is referred to in this decision:

*Hillingdon London Borough Council v ARC Limited* [1999] Ch 139

## **Introduction**

1. The issue before the Tribunal is whether the claimant, Five Oaks Land Limited, has referred a claim for compensation to the Tribunal within the period of six years allowed by section 9(1) of the Limitation Act 1980.
2. On 31 March 2015 the London Borough of Redbridge compulsorily acquired 66 separate parcels of land at Five Oaks Lane in Redbridge. The last date by which claims for compensation arising from the acquisition could be made was 31 March 2021.
3. On 30 March 2021 17 individual notices of reference were filed with the Tribunal claiming compensation under the Land Compensation Act 1961. The same solicitors acted on behalf of all of the claimants. Each notice of reference was in the Tribunal's standard T371 form and provided the information required by rule 21(3), Tribunal Procedure (Upper Tribunal) (Lands Chamber) Rules 2010 ("the Rules"). Each notice named a different claimant or group of claimants with an interest in an identified parcel of land.
4. The individual notices of reference related in aggregate to 22 separate parcels of land but each was accompanied by a single statement of case covering all of the claims. The statement of case opened by explaining that it was being submitted on behalf of each person listed at paragraph 2 of the document who were to be referred to as "the Claimants". Paragraph 2 then identified 23 individuals and companies, the last of whom was the claimant in this reference, Five Oaks Land Limited ("FOLL").
5. The issue arises because although FOLL was one of the Claimants listed in the statement of case, none of the notices of reference was lodged on its behalf or referred to it as a claimant.
6. The Tribunal's standard form of notice of reference invites the person making the reference to provide details of every other person with an interest in the land. In some of the notices of reference, but not all, FOLL was identified as such a person.
7. The parties agreed an immediate stay of proceedings in all of the references to enable them to exchange information. The stay expired at the start of October and a case management hearing was listed to be heard on 26 November. One week before that hearing the claimants' solicitors indicated that they intended to invite the Tribunal to waive or extend the time for compliance with the requirement to file a formal notice of reference. At the prompting of the Tribunal a notice of reference in form T371 was filed a day or two before the hearing and the Tribunal's staff opened a new case and allocated a case number to the reference.
8. The respondent now resists FOLL's application for remedial directions and maintains that any claim for compensation by FOLL is out of time. FOLL's position is that its claim was referred to the Tribunal before the expiry of the limitation period.

## **Statutory provisions and procedural rules**

9. By section 9(1), Limitation Act 1980 a claim to recover compensation must be "brought" within 6 years from the date on which the claimant's cause of action accrued. In *Hillingdon*

*London Borough Council v ARC Limited* [1999] Ch 139 the Court of Appeal determined that a claim for compensation for compulsory purchase is subject to the limitation period laid down in Section 9 and that the relevant cause of action arises on the date of entry and expires six years later. Prior to that decision it had been generally understood to be the law that limitation did not apply to a reference to the Tribunal to determine compensation on compulsory acquisition.

10. The starting point in determining whether a claim to recover compensation has been brought within the limitation period is section 1 of the Land Compensation Act 1961 which provides that:

“Where by or under any statute (whether passed before or after the passing of this Act) land is authorised to be acquired compulsorily, any question of disputed compensation ... shall be referred to the Upper Tribunal and shall be determined by the Tribunal in accordance with the following provisions of this Act.”

It follows that a claim will be “brought” for limitation purposes if it is “referred to the Upper Tribunal” within the requisite period.

11. The Tribunal’s Rules and Practice Directions govern its procedure. Rule 7 is headed “Failure to comply with rules etc” and explains that an “irregularity” resulting from a failure to comply with any requirement in the Rules, a practice direction or a direction of the Tribunal, does not of itself render the proceedings void. By rule 7(2) the Tribunal may require the failure to be remedied.
12. In considering any application under rule 7 or rule 8 (striking out a party’s case) the Tribunal required to bear in mind its overriding objective to deal with cases fairly and justly (rule 2). Dealing with a case fairly and justly included dealing with the case in ways which are proportionate to its importance, complexity, cost and resources of the parties, and avoiding delay.
13. Part 5 of the Rules is concerned with references and applies generally to all proceedings allocated to the Tribunal except those for which different procedures are provided for elsewhere in the Rules. Part 5 applies to references for compensation under the 1961 Act.
14. Rule 28(1) provides that:
  - (i) “proceedings to which this Part applies must be started by way of reference made by sending or delivering to the Tribunal a notice of reference.
  - (ii) the parties to the proceedings are the person making the reference and any person named as a party in the notice of reference.”
15. Rule 28(3) explains what information must be included in a notice of reference such as the name and address of the person making the reference and of their representative (if any), together with factual information about the land to which the reference relates and the

relevant interests in it. The notice of reference must also be signed and dated. By rule 28(3)(g) it must state the amount claimed and explain how it is calculated (if the reference is made by a claimant for compensation). The person making the reference must provide the fee payable to the Tribunal with the notice of reference (rule 28(3)(4)(c)).

16. The Tribunal's Practice Directions indicate that a notice of reference should be made using prescribed form T371.

### **FOLL's claim**

17. FOLL's contention that its claim for compensation was referred to the Tribunal within time is based on the content of the statement of case which was filed in each of the references by the solicitors retained by FOLL and the other claimants to act for them. Mr Pereira QC who appeared for FOLL with Mr George Mackenzie made it clear that he did not rely on any matter which had occurred after 30 March 2021 when the 17 notices of reference were filed, each with a copy of the consolidated statement of case.
18. As appears from the statement of case, FOLL's interest in the land acquired by the respondent is not that of a landowner but arose instead under a series of options. It first began acquiring land at Five Oaks Lane under option agreements in 1997. By 1999 it had conditional contracts to purchase all but four of the plots which were eventually the subject of compulsory acquisition by the respondent. Having obtained those contracts FOLL sought planning permission for a scheme of redevelopment of the whole of the Lane. In 2001 four connected planning consents were granted, three on applications by FOLL and one on the application of Countryside Properties. The consents permitted a development of 390 residential units subject to a condition requiring the submission of a scheme demonstrating how the development of the site could be achieved comprehensively.
19. Only one of the 2001 permissions had been implemented by the entry date. A further permission had been granted in 2014 and was extant at that date. Reserved matters approval had been obtained for the unimplemented permissions before they expired.
20. By 2007 a number of FOLL's option agreements had lapsed. By the end of April 2012 it had the right to acquire only 14 properties and Countryside owned just under half of the area of the development site. Negotiations between FOLL and Countryside failed and FOLL's case is that its own efforts at land assembly were overshadowed by Countryside's encouragement of the respondent to exercise its compulsory purchase powers, as it eventually did in 2015.
21. At paragraph 38 of the statement of case the position in relation to landownership at Five Oaks Lane on the date of entry is explained in general terms with further detail of the holdings of individual claimants being provided in appendices. Appendix 1 is a table providing the name and plot number of each claimant together with particulars of the land acquired from them. The table includes a separate column headed "FOLL contract interest" containing brief information on the source of any interest enjoyed by FOLL in that claimant's land. The date of each option is given (all of the dates fall between December 2011 and March 2013). The schedule does not state whether the option remained exercisable

at the valuation date but my reading of the statement of case is that the options identified in the schedule were extant when the land was compulsorily acquired (in contrast to options obtained before 2011 which are not identified in the schedule).

22. The principles on which FOLL says its claim should be quantified are also explained in the statement of case. It is said that a willing purchaser of the freehold of land subject to an option in FOLL's favour would have entered into negotiations with to secure a release of the option. Where the options allowed the acquisition of the land at below its market value on the date of entry, their value to FOLL was equivalent to the difference between the option price and the market value of the unencumbered freehold. The claimants contend that in the no scheme world the Lane would have been as a single development project with a total land value of £59m (a little over £1.1m per acre). The division of that total amongst landowners would have taken account of FOLL's options and it would have shared in the amount referable to each parcel in which it had an option depending on the relevant option price.
23. The statement of case identifies FOLL as one of the intended claimants and sets out the basis of its claim. The concluding summary of the claim is provided on behalf of all claimants claiming a total of £17.25m is intended to include the value of FOLL's options.
24. Although the statement of case does not specify the sum claimed by FOLL in relation to each of the plots over which it had an option at the entry date, it is abundantly clear that the sum of £1.1m per acre represents the total value of the land acquired, and that the claimants' case is that they (including FOLL) would have shared in that total in proportions agreed between them. Where the option price allowed FOLL to acquire the land for less than £1.1m per acre both FOLL and the freeholder would share the entitlement to compensation at that rate, which would fall to be divided between them in the proportion which the contractual option price bore to the unencumbered value.

### **The respondent's position**

25. Mr Booth QC, who appeared for the respondent with Ms Rebecca Clutten, explained that the respondent was unsure when it received the statement of case and the notices of reference whether it was intended to make a claim on behalf of FOLL. I find that surprising as the statement of case plainly includes a claim on behalf of FOLL. The only uncertainty is why, unlike the other claimants, FOLL had omitted to file a notice of reference in the Tribunal's usual form.
26. Mr Booth QC referred to the fact that paragraph 20(1) of the Rules expressly requires that proceedings to which Part 5 applies must be started by sending a notice of reference to the Tribunal. He submitted that in the absence of such a notice, no reference to the Tribunal had been made. The requirement of a statement of case is not found in the Rules (although rule 28(3)(g) does require that a reference by a claimant should explain how the amount claimed is calculated and provide a summary of the reasons for making the claim) and Mr Booth submitted that a statement of case could not stand as a substitute or proxy for a notice of reference. Mr Booth also relied on rule 28(2) which states expressly that the parties to the proceedings are those identified in the notice of reference and to the claimant's failure to pay the Tribunal fee for a reference by FOLL.

## Determination

27. Section 1, Land Compensation Act 1961 requires that where land has been compulsorily acquired a disputed claim for compensation must be “referred to the Upper Tribunal”. The question in this case is whether the statement of case submitted on behalf of each of the claimants was enough to refer a claim by FOLL to the Tribunal. I am satisfied that it was. The substantive requirement of the 1961 Act was complied with although it was certainly not done in the form required by the Rules and Practice Directions.
28. I do not accept that the question whether a claim for compensation has been referred to the Tribunal is to be determined by considering whether rule 28 has been complied with. The 1961 Act does not require a notice of reference nor does it prescribe the form in which a disputed claim for compensation is to be referred to the Tribunal. The Tribunal’s Rules and Practice Directions cannot impose substantive limitations on the making of a claim which are not found in the 1961 Act. A document submitted to the Tribunal asking it to resolve a dispute over the amount of compensation payable to a named claimant is all that is required by the statute.
29. If the only document submitted to the Tribunal had been a single copy of the statement of case, with no notices of reference on behalf of any of the claimants, there would have no doubt at all that the Tribunal would have had jurisdiction to determine the claims for compensation by every one of those identified as claimants in paragraph 2 of that document. The fact that 17 copies of the statement of case were submitted together with 17 notices of reference covering only 22 of those named as claimants in the statement of case does not to my mind mean that no claim has been referred to the Tribunal by the twenty-third of those claimants, FOLL.
30. As Mr Booth QC emphasised, the statement of case did not contain all of the information required of a notice of reference and was not compliant with rule 28 or the Practice Directions. But rule 7(1) explains that an irregularity resulting from a failure to comply with any requirement in the Rules, a practice direction or a direction of the Tribunal, does not of itself render the proceedings void. By rule 7(2) the Tribunal may require the failure to be remedied. Mr Booth submitted, in the alternative, that the Tribunal ought not to exercise its discretion under rule 7(2) to waive the failure to file a compliant notice of reference or permit it to be remedied. In support of that submission Mr Booth referred to correspondence passing between the parties both before the submission of the notices of reference and statement of case in the other references and after the expiry of the limitation period.
31. The issue of FOLL’s standing to make a claim had been raised by the respondents’ solicitors before the commencement of any of the references. After they received the notices of reference and statements of case they pointed out to FOLL’s solicitors that no notice of reference had been submitted to the Tribunal on behalf of FOLL. The issue was first raised on 15 April and again on 19 May. On 3 June the claimant’s solicitors confirmed that no separate notice of reference had been filed and said that FOLL relied on the fact that it was named as a claimant in the statement of case.

32. Despite the issue being identified in the middle of April, no formal application was made until immediately before the hearing for permission to rely on a notice of reference in the Tribunal's standard form.
33. I do not regard the delay in making a formal application to put the reference in proper order as being as egregious as Mr Booth suggested. When the notices of reference were submitted to the Tribunal the parties jointly applied for and were granted a stay which continued until 18 October. The application for a stay explained that the claimants' solicitor, who had been involved in this matter for 15 years, had sadly died on 28 April.
34. It would have been better if the claimants' application to regularise the proceedings had been made earlier but in view of the fact that the parties had agreed a stay of proceedings and the Tribunal had fixed a date for a case management hearing, in circumstances where the person with the overall direction of the proceedings had died unexpectedly, I do not regard the delay as either inexplicable or unforgivable.
35. In my judgment it would be unfair and unjust for FOLL not to be allowed to pursue what may be a valuable claim for compensation. The other 17 references would continue and, as the parties agree, are to be heard together so there would be no significant saving of time or tribunal resources or costs for the parties if the FOLL reference was to be excluded. The only beneficiary would be the respondent which would have acquired the land without having to pay compensation reflecting the value of FOLL's interest. The respondent would nevertheless gain an advantage from FOLL's rights as it would be able to assert that the interests of those owners who granted options to FOLL were less valuable to them because of the existence of the options. That would provide an undeserved windfall to the respondent and would be unfair to FOLL.
36. In any event, a refusal to allow FOLL to remedy its failure to comply with rule 28 and the Practice Directions would not be sufficient for Mr Booth's purposes because it would not dispose of the reference. I have already determined that FOLL's claim was referred to the Tribunal on 30 March, within the limitation period, when its solicitors filed the statements of case naming it as a claimant and explaining the basis of its claim in some detail. The Tribunal is required either to determine that reference or to strike it out.
37. The Tribunal's powers to strike out a party's case are found in rule 8. Neither rule 8(1) nor 8(2) applies here: the Tribunal has jurisdiction and has not made an unless order which the claimant has failed to comply with. The Tribunal's powers under rule 8(3) permit it to strike out the whole or part of any proceedings if a party has failed to comply with a direction warning of that consequence, or a party has failed to cooperate with the Tribunal to such an extent that it cannot deal with the proceedings fairly and justly, or where there is no reasonable prospect of the case succeeding.
38. The general effect of rule 8 is that before the Tribunal may strike out a claim which it has jurisdiction to determine and which cannot be said to have no reasonable prospect of success, it must first make a direction informing the party that failure to comply may lead to the striking out of the proceedings. That condition has not been satisfied in this case, and the reference itself cannot be struck out. Even after proceedings have been struck out for failure

to comply with the direction it is open to a party to apply under rule 8(5) for the proceedings to be reinstated.

### **Disposal**

39. I therefore determine that FOLL's claim was referred to the Tribunal within time. I will additionally make an order under rule 7(2) waiving the requirement in rule 28(1) that proceedings must be started by sending a notice of reference to the Tribunal. The notice of reference which was filed with the Tribunal on 23 November is accepted as the claimants' notice of reference.
  
40. The parties have no doubt incurred considerably more costs in connection with the case management hearing than they would have done if a compliant notice of reference had been submitted before the expiry of the limitation period. On the other hand, as a public authority exercising compulsory powers, the respondents might have been expected to consent to an order in the form I have indicated rather than seeking to have the claimant's property for nothing. Nevertheless my provisional view, not yet having received submission, is that the appropriate order in relation to the costs of the application is that they should be the respondent's costs in the reference (i.e. if at the conclusion of the reference the Tribunal makes an order for the costs of the reference to be paid by the claimant to the respondent, those costs will include the costs of the application, but if the claimants are entitled to their costs of the reference, they will not recover the costs of the application). If either party wishes to argue for a different order they should do so on notice in writing within 10 days of receiving this decision.

Martin Rodger  
Deputy Chamber President

2 December 2021